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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 669.

HOWARD HARDESTY, AS RECEIVER OF THE NATIONAL BANK OF FAIRMONT, WEST VIRGINIA,
Petitioner,

v.

FAIRMONT SUPPLY COMPANY, A CORPORATION.

REPLY BRIEF ON BEHALF OF PETITIONER.

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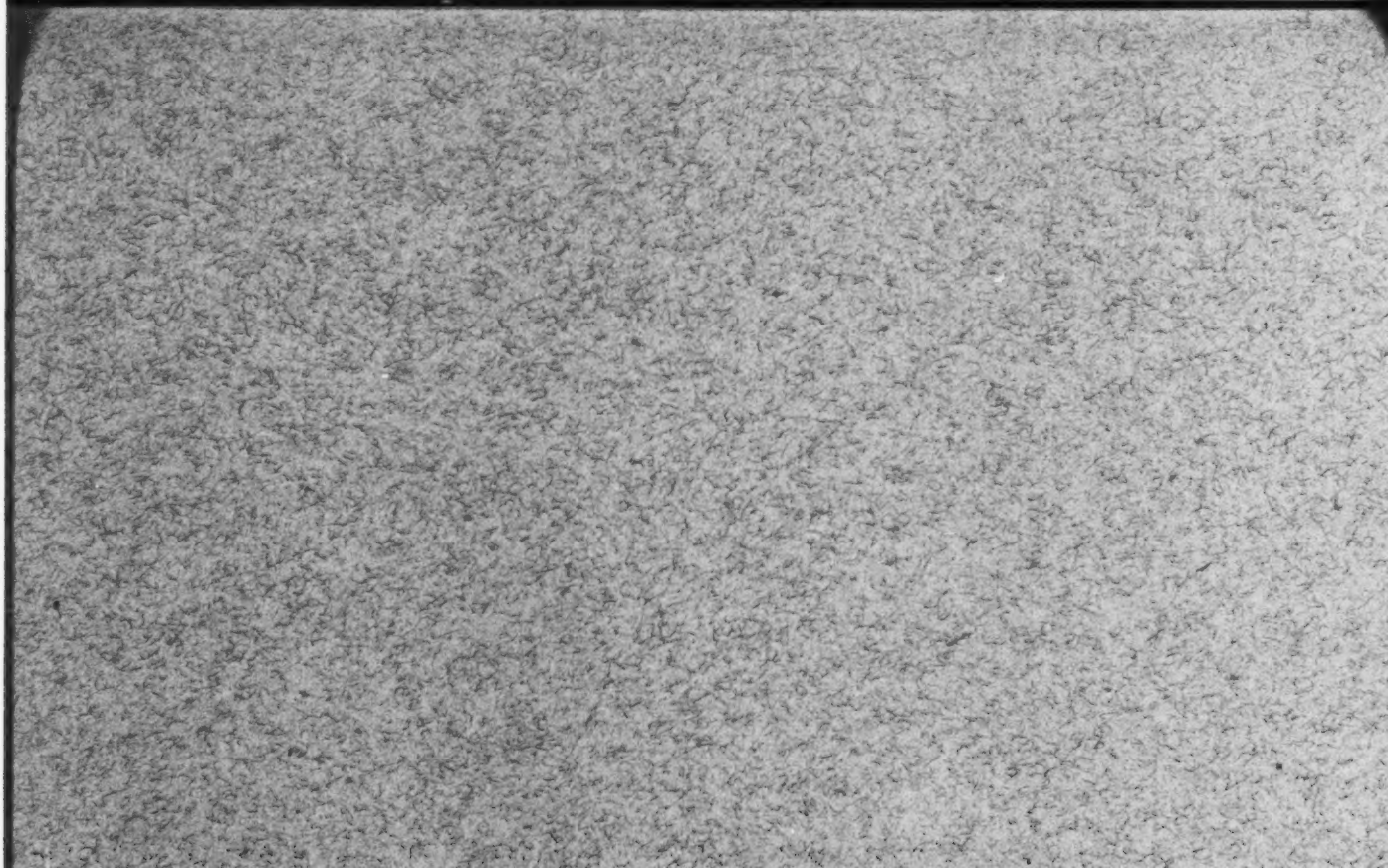

INDEX

Subject Index

	Page
I—Finality of Judgment	1
II—Federal Questions	2
A. Federal Questions Presented by Petitioner	2
B. Respondent's Contentions as to Federal Questions	3
C. Petitioner's Reply to Foregoing Contentions of Respondent	4
III—Conclusion	12
Appendix	14

Cases Cited

Ancient Egyptian Order v. Michaux, 279 U. S. 737	6
Carter v. Texas, 177 U. S. 442	6
Cook County National Bank v. United States, (1882) 107 U. S. 445	7
Cooper v. O'Connor, (App. D. C., 1938) 99 F. (2d) 135, cert. den. 305 U. S. 643	7
Cooper v. O'Connor, (App. D. C., 1939) 105 F. (2d) 761	7
Davis v. Elmira Savings Bank, (1896) 161 U. S. 275	7
First National Bank v. Anderson, 269 U. S. 341	6
Great Northern Ry. v. Washington, 300 U. S. 154	6
Green Bay Canal Co. v. Patten Paper Co., 172 U. S. 58	9
Gross v. United States Mortgage Co., 108 U. S. 477	10
Indiana ex rel. Anderson v. Brand, 303 U. S. 95	10
In re Chetwood, (1897) 165 U. S. 443	7
Jennings v. U. S. F. & G. Co., (1935) 294 U. S. 216	7
Jones National Bank v. Yates, 240 U. S. 541	9
Kennedy v. Gibson, et al., (1869) 8 Wall. 498	7
Lovell v. Griffin, 303 U. S. 444	6
Norris v. Alabama, 294 U. S. 587	6
Philadelphia Fire Association v. New York, 119 U. S. 110	10

Page

Pufahl v. Parks, (1936) 299 U. S. 217 7
Schuylkill Trust Co. v. Pennsylvania, 296 U. S. 113 6
Truax v. Corrigan, 257 U. S. 312 6
U. S. v. Weitzel, (1918) 246 U. S. 533 7
Ward v. Love County, 253 U. S. 17 6
Yonkers v. Downey, (1940) 309 U. S. 590 7

STATUTES CITED

12 U. S. C., Secs. 198-200 ..... 8, 9
Rule 41, Revised Rules of the Supreme Court of the United States 10

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REPLY BRIEF ON BEHALF OF PETITIONER.

I.

FINALITY OF JUDGMENT.

Respondent seems to agree with Petitioner that the judgment of the Court below is final, and that it was thereunder adjudicated that neither Petitioner, in his fiduciary capacity as Receiver, nor the insolvent bank as a corporation, acquired title to the real estate by the transactions in question. The following extracts from Respondent's brief are in point:

> (P. 4): "The above quoted parts of the Court's opinion definitely decided the chancery cause."
> (P. 7): "Finality to the cause was achieved, when the three major questions were adjudicated."

(P. 13): " * * * The decision of the State Court establishes legal title in Robert C. Miller, individually, *and the argument is untenable that the land involved is an asset of the Bank.* The lots in question can never become an asset of the Bank, until a trust is established for the benefit of the Bank, and the Receiver of the Bank will then have the right to administer them as an asset. *The vice of these transactions can now only be cured by a proper chancery cause to establish a trust for the benefit of the closed Bank.*" (Italics inserted).

II.

FEDERAL QUESTIONS.

A. Federal Questions Presented by Petitioner.

For convenience of reference, Petitioner repeats, here, the Federal questions set forth on pages 9-10 of his petition:

"(1) Under the national banking laws, as construed by the courts, does the receiver of a national bank who has been duly authorized to purchase real property on behalf of his receivership, have capacity and power to take title to said property in his name, in his fiduciary and representative capacity, as receiver of said bank, or must said title in terms be conveyed to, and in the name of, the receivership bank as a corporation, in order to avoid the consequence of title passing to said receiver in his individual and personal capacity?

"(2) Upon the death or resignation of a receiver of a national bank, do the receivership assets pass, by operation of the national banking laws, from the predecessor receiver to his successor?

"(3) Does the law of West Virginia, to the effect that: 'Where a conveyance is made to a person whose name is followed by an official title or name of office, the title or office is merely *descriptio personae* of the grantee and title vests in the grantee individually', apply to deeds purporting to convey title of real property to a national bank receiver in his fiduciary or representative capacity as receiver?"

B. Respondent's Contentions as to Federal Questions.

Respondent contends in its brief that the decision of the court below *was based on adequate non-federal grounds,* and that the questions presented by petitioner, as federal questions, were entirely collateral to the main issues, and were not necessary to the disposition of the case. Respondent's position in these respects is summarized, in substance, on pages 2-4 of its brief, the pertinent portions of which, are, for convenience of reference and consideration, here quoted:

> "(1) Whether under the laws of the State of West Virginia, the three points of law decided in the judgment (R. 142) of the Supreme Court of West Virginia and stated in its syllabus of the case, to wit:
>
> " '1. Whether a conveyance of land passes a legal or equitable estate therein is determined by the law of the state where the land is situated.
>
> " '2. Where a deed conveyed land to "R. F. Miller, receiver of The National Bank of Fairmont, an insolvent national banking association", legal title to the land described therein passed to the receiver as an individual.
>
> " '3. Upon the death of a receiver of an insolvent national banking association, legal title to land, held by the receiver as an individual, does not pass to his successor by operation of law.' (R. 143, 14 S. E. (2d) 436),

are non-federal questions and the decision upon them is broad enough to maintain the judgment and constitutes a full and final determination of the cause.

> "(2) Whether the collateral questions discussed in the opinion of the Court (R. 142), but not decided in or referred to in its syllabus, to wit:
>
> 1—That the Receiver of The National Bank of Fairmont is without authority to take title by deed to the real estate involved, when and if purchased by him in his fiduciary capacity, unless a trust is created therein in favor of the Bank, and

2—That the present Receiver, petitioner herein, of The National Bank of Fairmont is without authority to take title to such real estate by operation of law from his deceased predecessor, if any title to the land vested in his predecessor receiver. (R. 143, 14 S. E. (2d) 438),

are federal questions, and, if found to be federal questions, whether their disposition is necessary or unnecessary for a final determination of the cause."

Respondent further states:

"When the Supreme Court of West Virginia rendered its opinion in these three major particulars (referring to the decided points epitomized in the foregoing syllabus of the court below) there was eliminated any and all federal questions of substance, * * *" (Brief p. 3-4).

C. Petitioner's Reply to Foregoing Contentions of Respondent.

(a) Respondent's Alleged Collateral Questions.

It will be observed that the alleged "collateral questions" numbered 1 and 2 set forth by respondent at the top of page 3 of its brief and hereinabove quoted (*supra*, pp. 3-4) are, in substance and effect, a restatement of questions (1) and (2) set forth under "Questions Presented" on pages 9 and 10 of Petitioner's Brief, and hereinabove quoted (*supra*, pp. 2-3).

It will further be observed that these alleged "collateral questions" are, in effect, the same questions answered by the court below but modified by reason of the application of the law of West Virginia, as indicated by said numbered points (2) and (3) of the syllabus of the court below (quoted, *supra*, p. 3).

It is obvious, therefore, that said numbered questions (1) and (2) as thus presented by petitioner, and denominated by respondent "collateral questions" (brief p. 3) are not "collateral questions" but, on the contrary, they concern the disputed issues of title, and constitute the primary questions presented to the court below for determination.

(b) Respondent's Contentions as to Alleged Major Non-Federal Questions.

Respondent treats the said three paragraphs of the syllabus of the court below and the two alleged collateral questions as constituting five questions, notwithstanding the two alleged collateral questions are, in effect, the same as said numbered points (2) and (3) of said syllabus. Respondent then takes the position that the three questions embraced within said syllabus constitute major "non-federal questions". Respondent further contends (Brief pp. 4-5) that when the court below decided said three alleged "non-federal questions", said remaining two "collateral" questions, although passed upon by the court below, "neither add to nor subtract from the decision on the three main questions. They lack the force of adjudication." (Brief p. 5).

However, on page 26 of its brief, respondent states:

> "(g) The State Court's decision is based on adequate non-federal grounds and the State Court has merely formally determined the federal questions, which are unsubstantial and unnecessary to the determination of the cause."

Respondent is inconsistent in the position thus taken. Said "collateral" questions numbered (1) and (2) and thus conceded by the foregoing quoted statement as "formally determined * * * federal questions" apparently become "non-federal questions" under numbered points or questions (2) and (3) in the syllabus of the court below.

In other words, respondent's position apparently is that said two "collateral" federal questions are converted into non-federal questions solely by reason of the fact that in deciding said two federal questions the court below applied the law of West Virginia rather than the national banking laws.

Numbered question 3, as presented by petitioner on page 10 of its petition (and quoted herein, *supra*, p. 2) involves the issue of whether, on the one hand, the law of West Virginia, or, on the other hand, the national banking laws, shall

determine whether petitioner's predecessor acquired title to the land in question in his representative capacity. The court below decided said question, and held that the law of West Virginia should control. Its decision to that effect comprises numbered paragraph (1) of its syllabus, but, as indicated, it is a decision of Petitioner's question numbered (3).

The question of whether state law, or the national banking law, should govern the primary issues of title presented in the instant case, is itself a federal question. Obviously, determination by the state court that state law should control, does not, as hereinbefore indicated, convert federal questions into non-federal questions; nor does such decision by the state court oust This Court of jurisdiction to review the questions presented. If such doctrine were to be applied, This Court would be deprived of jurisdiction to entertain review. See *First National Bank* v. *Anderson*, 269 U. S. 341, 346; *Ancient Egyptian Order* v. *Michaux*, 279 U. S. 737, 744-745; *Schuylkill Trust Co.* v. *Pennsylvania*, 296 U. S. 113, 121; *Carter* v. *Texas*, 177 U. S. 442, 447; *Truax* v. *Corrigan*, 257 U. S. 312, 324-325; *Norris* v. *Alabama*, 294 U. S. 587, 590; *Great Northern Ry.* v. *Washington*, 300 U. S. 154, 166; *Lovell* v. *Griffin*, 303 U. S. 444, 450; *Ward* v. *Love County*, 253 U. S. 17, 22.

(c) *Nature of the Federal Questions Presented, in View of the Controlling Effect of National Banking Law in the Instant Case.*

Petitioner does not deny the *general doctrine* that ordinarily the law of the situs, *i. e.*, the law of the state where land is located,—governs questions concerning acquisition of title to land including questions of succession to title upon the death of the land owner. However, it would seem clear that if, either by express provision of the national banking statutes or by implementation of said statutes by court decisions interpreting and construing the same, the issues in the instant case are embraced within the provisions and requirements of the national banking laws as thus implemented, the general doctrine concerning the law of

the situs must give way to the paramount provisions of the national banking law as applied to the particular situation presented. It is, of course, settled doctrine that the national banking laws, as interpreted and construed by the courts, constitute a complete system covering not only the organization but also the liquidation in receivership, of national banks, and that state laws cannot be effective when in conflict with the national banking law, or where the state law, if applied, would defeat the purposes of the national banking law.

Cook County National Bank v. *United States,* (1882) 107 U. S. 445, 448;
Jennings v. *U. S. F. & G. Co.,* (1935) 294 U. S. 216, 226;
Davis v. *Elmira Savings Bank,* (1896) 161 U. S. 275, 283;
Yonkers v. *Downey,* (1940) 309 U. S. 590, 596.

It is also settled doctrine that receivers of national banks are officers of the United States and agents of the Comptroller of the Currency, and derive their authority and power and capacity to act from the national banking law (as implemented by court decisions), subject, of course, to appropriate instructions from the Comptroller of the Currency.

Kennedy v. *Gibson, et al.,* (1869) 8 Wall. 498, 504-506;
In re Chetwood, (1897) 165 U. S. 443, 458;
U. S. v. *Weitzel,* (1918) 246 U. S. 533, 541;
Pufahl v. *Parks,* (1936) 299 U. S. 217, 225;
Cooper v. *O'Connor,* (App. D. C., 1938) 99 F. (2d) 135, 139, *cert.* den. 305 U. S. 643;
Cooper v. *O'Connor,* (App. D. C., 1939) 105 F. (2d) 761, 763.

Petitioner's Claims Under the National Banking Law.

Having in mind the foregoing doctrines, and weighing and evaluating petitioner's claims of title in the light thereof, the situation appears to be:

(1) Assuming petitioner's predecessor receiver,—Miller,—acting under the authority of the national banking law

(Sections 198-200 of title 12 U. S. C.), (See Appendix hereof) and by direction of the Comptroller of the Currency and with the approval of the Secretary of the Treasury,—purchased the land in question at execution sale, and paid for the same from the funds of the receivership bank,—did said receiver Miller have capacity to take title to said property in his name in his fiduciary and representative capacity, as receiver of the bank, or was it necessary that title in terms be conveyed to, and in the name of, the receivership bank as a corporation, in order to avoid the consequence of title passing to said receiver in his individual and personal capacity?

The court below, as to this question, decided that under the deeds of the Special Commissioner purporting to convey said lands to "Robert C. Miller, Receiver of The National Bank of Fairmont, an insolvent national banking association," title did not pass, either to said Miller in his fiduciary or representative capacity as receiver, for the benefit of the bank, nor to said bank as a corporation; and further, that title passed to said Miller in his individual capacity. (R. 148)

(2) Assuming, however, for discussion, that title under said deeds *did pass to said Miller in his fiduciary and representative capacity as receiver,* did said title,—upon the death of said Miller, pass, by operation of the national banking laws, from said Miller to petitioner as successor receiver.

The court below, in effect, held as to this question that inasmuch as there was "no statute which authorizes a receiver of a national banking assiciation to take title from his deceased predecessor by operation of law", (R. 148) title did not pass to petitioner as successor receiver but passed to the heirs of said Miller. (See previous discussion, Petition p. 8)

Petitioner, in his bill of complaint, set forth in detail:—the circumstances and proceedings under which he claimed that his predecessor receiver,—Miller,—had acquired title to the lands in question; refusal

of respondent to accept deeds on the ground of alleged lack of title for the reasons specified (and subsequently reiterated by respondent in its demurrer to the bill of complaint); and thereupon petitioner, in numbered paragraph 7 of the bill of complaint (R. 14-15) affirmatively claimed that by virtue of the facts and circumstances and proceedings set forth in the bill of complaint,—petitioner's predecessor did acquire title to said lands in his fiduciary and representative capacity as receiver and further that said title passed to petitioner as successor receiver.

It is obvious that Petitioner was claiming, specifically, title rights to the land in question, in his official capacity as receiver of a national bank, (a) in reliance upon acts taken under national banking law (Sections 198-200, title 12, U. S. C.) by his predecessor receiver Miller, in purchasing the property with receivership funds, and (b) under right of succession to title by operation of the national banking law.

Discussion under the next topic will indicate that while a specific right or claim must be asserted it is not necessary that specific reference to the statute be made.

(d) *Sufficiency of Disclosure of Federal Questions By the Record.*

It is settled law that it is not necessary that one who is claiming a right under a Federal statute, must, in terms, name or specify the particular Federal statute under which the claim is asserted. *If the decision of the case required the consideration and application of the Federal statute to support the claim, the Federal question has been sufficiently raised. Jones National Bank* v. *Yates*, 240 U. S. 541, 550-551; *Green Bay Canal Co.* v. *Patten Paper Co.*, 172 U. S. 58, 67. It is not open to question that it was necessary to consider the interpretation and construction and effect of national banking laws to decide the two primary issues in the instant case, to wit,—whether title passed to petitioner's predecessor, Miller, in his fiduciary and representative ca-

pacity and whether petitioner succeeded to the title of Miller, as Receiver, upon the death of Miller.

Rule 41 of the Revised Rules of This Court require that the transcript of record shall include, *inter alia*, the opinion of the court below. It is settled doctrine, in view of this requirement, that This Court may examine the opinion of the court below to determine the existence and the nature of the alleged Federal question presented to This Court for review and to determine whether substantial Federal questions were actually presented to and passed upon by the court below in deciding the case. *Indiana ex rel Anderson* v. *Brand*, 303 U. S. 95, 98-99; *Philadelphia Fire Association* v. *New York*, 119 U. S. 110, 116; *Gross* v. *United States Mortgage Co.*, 108 U. S. 477, 486.

(e) *Opinion of the Court Below Discloses That Substantial Federal Questions Were Presented to and Decided by the Court Below.*

The following extracts from the opinion of the court below definitely establish that the three federal questions enumerated by petitioner (Petition pages 9-10) were presented to, passed upon, and decided by, the court below:

> "In order that the questions involved in this certificate may be properly discussed, it is necessary to consider the effect of the appointment of a receiver for a national banking association by the Comptroller of the Currency, as well as the authority and powers of the receiver so appointed.
>
> "When a national bank becomes insolvent and the Comptroller of the Currency takes charge of its affairs and appoints a receiver, all its assets pass to the possession and control of the receiver in trust to reduce the same to money and apply them as directed by the National Banking Act. U. S. C. A. Title 12, Sections 192 and 194; *Anderson* v. *Cronkleton* (C. C. A. Neb. 1929), 32 Fed. (2d) 170. The receiver of a national banking association has the power to purchase real estate under the direction of the Comptroller of the Currency, when such is necessary to protect the assets of

the insolvent bank. U. S. C. A. Title 12, Sections 198, 199 and 200.

"An insolvent national bank does not lose its corporate identity by the appointment of a receiver. *The First National Bank of Bethel* v. *The National Pahquioque Bank*, 14 Wall. 383, 20 L. Ed. 840. It may still enter into transactions not forbidden by law. 'It is clearly, we think, the intention of the law, that it should continue to exist as a person in law, * * *.' *Chemical National National Bank* v. *Hartford Deposit Co.*, 161 U. S. 1, 40 L. Ed. 595, 16 Sup. Ct. 439; *Hiatt* v. *Warren* (5 C. C. A.) 44 Fed. (2d) 313; *Neely* v. *Planters National Bank of Clarksdale, Miss.*, 48 Fed. (2d) 266. It would seem that the powers of a receiver of a national banking association and his capacity to control and deal with the assets thereof are well and fully defined." (R. 145-146)

* * * * * * * * *

"In the case of *Rinehart, Receiver* v. *Ireland*, 120 W. Va. 599, 199 S. E. 871, also cited by counsel, this Court had under consideration the question of the powers of the receiver of a state bank. The statute which measures the power and authority of the receiver of a state bank is not in terms the same as the statute which defines the powers and authority of the receiver of a national bank. The law under which the receiver of a state bank operates, provides that he shall have all the powers vested in special receivers by general law, thus giving the receiver of a state bank appointed under Code, 31-8-32, wider powers than those given to the receiver of a national bank. The receiver of a national bank is an agent whose authority is limited by law. *Whelan* v. *Blankenbeckler* (5 C. C. A.), 87 Fed. (2d) 81; *Scott* v. *Armstrong*, 146 U. S. 499, 13 Sup. Ct. 148, 36 L. Ed. 1059.

"Miller had the power to purchase the real estate here in question, if the protection of the assets of the insolvent association required the same. However, if he used the funds of his trust in purchasing such real estate, he did not have authority to take title to the property in his own name. Since Miller was apparently acting in a fiduciary capacity as receiver of the bank, he exceeded his authority in accepting the deeds herein mentioned, and the legal title to the real estate vested in him individually. We are not aware of any statute

which authorizes the receiver of a national banking association to take title from his deceased predecessor by operation of law. There being no such statutory provision, the legal title, upon the death of Miller, passed to his heirs by the laws of descent prevailing in this jurisdiction." (R. 147-148)

* * * * * *

"However, another question now arises: Does the law of this jurisdiction apply in the construction of a deed conveying land to the receiver of a national bank? It seems that the answer to this question is largely determinative of the result herein. The alienation and transfer of real estate is governed by the law of the state in which the land is located." (R. 146)

III.

CONCLUSION.

Petitoner respectfully submits:

(1) That the judgment of the court below is final, for purpose of review by This Court on petition for writ of *certiorari.*

(2) That the questions specified on pages 9-10 of the petition, constitute substantial federal questions which were effectively raised upon the record, and which were presented to and decided by the court below in rendering the judgment now sought to be reviewed.

(3) That the record sufficiently establishes, for purpose of review:

(a) That the lands in question were purchased by petitioner's predecessor,—Robert C. Miller, as receiver of The National Bank of Fairmont, West Virginia, under authority of the national banking laws (Sections 198-200, Title 12, U. S. C.) by direction of the Comptroller of the Currency, with the approval of the Secretary of the Treasury, and that said lands were paid

for by said Miller, as receiver, from the funds of the receivership bank.

(b) That title to said lands passed to said Miller in his fiduciary and representative capacity as receiver, and did not pass to said Miller in his individual capacity.

(c) That after the death of said Miller, title to said lands passed, by operation of the national banking laws, from said Miller as receiver, to petitioner as successor receiver.

(d) That the judgment of the court below deprives petitioner of property rights asserted by him as receiver under the national banking laws.

(4) That the petition for *certiorari* should be granted.

Respectfully,

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